

****NOT FOR PRINTED PUBLICATION****

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

KARL TIPPLE,

Plaintiff,

V.

KROGER TEXAS, LP,

Defendant.

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CASE NO. 4:12-CV-573
Judge Clark/Judge Mazzant

**ORDER ADOPTING REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On June 19, 2013, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Defendant's Motion for Final Summary Judgment [Doc. #14] be denied [Doc. #33]. On July 1, 2013, defendant filed objections [Doc. #35]. On July 2, 2013, plaintiff filed a response [Doc. #36].

The Magistrate Judge determined that defendant failed to establish that there were no material fact issues remaining. Defendant filed fifteen pages of objections that merely reargue the same points made in the motion for summary judgment. The court agrees with the Magistrate Judge's decision to recommend denial of the motion. It is alleged, and never denied, that the defendant's manager repeatedly spoke to plaintiff as follows: "**You are a fucking retarded idiot. You are too stupid to live.**" The court has not heard all the testimony, but along with other evidence presented, this could support a verdict for Plaintiff. The case shall proceed to trial.

Having received the report of the United States Magistrate Judge, and considering the objections thereto filed by defendant, this court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report as the findings and conclusions of the court.

It is, therefore, **ORDERED** that Defendant's Motion for Final Summary Judgment [Doc. #14] is **DENIED**.

So **ORDERED** and **SIGNED** this **8** day of **July, 2013**.

A handwritten signature in black ink, appearing to read "Ron Clark", is positioned above a horizontal line.

Ron Clark, United States District Judge